the cause of such reference, at which time L, exprssed inability to explain. Plaintiff maintained that the note in question had come to its possession in due course before the above statement was made by L, and objected to the trial court's admission of evidence as to that statement. *Held,* that the statements of the prior holder of the note after transfer were admissible. *First National Bank of West Minneapolis* v. *Harvey* (S. D., 1912), 137 N. W. 365.

While recognizing the general principle that statements made by a former owner of negotiable paper are inadmissible against a transferee thereof, the Court considered that sufficient evidence had been introduced to warrant the jury in finding that the note had been fraudulently obtained and covertly transferred to the plaintiff for the purpose of cutting off defenses. Evidence of fraud on the part of the transferee is sufficient to identify his interest in the paper with that of the prior holder and to enable admissions and declarations of the latter, though made after transfer, to be adduced against the former. WIGMORE, EVIDENCE, § 1084. In *Barough* v. *White,* 4 B. & C. 325, it was held that, before any declarations of a prior holder of a negotiable instrument could be admitted, preliminary evidence must be offered connecting the transferee with the prior holder. Any element destroying the bona fide character of the transferee would seem in most jurisdictions to be sufficient. *Bond* v. *Fitzpatrick,* 4 Gray 89; *Frick* v. *Reynolds,* 6 Okl. 638.

EVIDENCE—RIGHT TO INTRODUCE SECONDARY EVIDENCE OF CONTENTS OF A DOCUMENT WHEN THE ORIGINAL IS BEYOND JURISDICTION OF THE COURT.—In a suit upon a fire insurance policy, the court admitted secondary evidence of the contents of concurrent policies of fire insurance, the original policies being outside the jurisdiction of the court. *Held,* In ascertaining the amount of concurrent insurance both parties were interested, and under such circumstances, the secondary evidence was admissible. *Peters & Roberts Furniture Company* v. *Queen City Fire Insurance Company of Sioux Falls,* S. D. (Ore. 1912), 126 Pac. 1005.

The Courts are not harmonious in their views as to when secondary evidence of the contents of a document may be introduced, the original being in the hands of a third party and beyond the jurisdiction of the Court. No fixed rule defining the diligence required in such cases, if any, to excuse nonproduction of the original has been settled upon by the Courts. WIGMORE, EVIDENCE, § 1213. The weight of authority seems to sustain the view that no diligence need be exercised to produce the original upon a showing that the document is beyond the jurisdiction of the Court. In *Burton* v. *Driggs,* 20 Wall, 125, Justice SWAYNE said, "It is well settled that if books or papers necessary as evidence in a Court in one state be in possession of a person living in another state, secondary evidence, without further showing, may be given to prove the contents of such papers, and notice to produce them is unnecessary." See also *Hagaman* v. *Gillis,* 9 S. D. 61; relying on *Burton* v. *Driggs*; *Woods* v. *Burke,* 67 Mich. 674; *Knickerbocker* v. *Wilcox,* 83 Mich. 200; *Shepard* v. *Giddings,* 22 Conn. 282. Some Courts insist upon the exercise of some diligence. *Londoner* v. *Stewart,* 3 Colo. 47; *Waite* v. *High,* 96 Iowa 742. Various degrees of diligence have been held sufficient, though

the necessity for any degree of diligence whatever is not expressly set forth. A sworn copy was admitted after effort had been made to procure the original in *Fisher* v. *Greene,* 95 Ill. 94, but the Court do not state whether such preliminary effort was essential. In *Phillips* v. *United States Benevolent Society,* 125 Mich. 186, the cases are reviewed and the conclusion arrived at that diligence to procure the original must be pursued, and if the efforts prove fruitless a sworn copy must be produced when it is practicable to do so.

GUARDIAN AND WARD — LIABILITY ON BONDS — GENERAL AND SPECIAL BONDS.—Suit on a guardian's general bond against the surety thereon. The defendant set up in answer that part of the amount claimed consisted of the proceeds from a sale of the ward's real estate, upon which sale a special sales bond had been given. A demurrer to the answer was sustained, and defendant assigns this ruling as error. *Held,* the demurrer was properly sustained. The special sales bond was merely cumulative security and did not release the general bond from liability to account for such proceeds. *Southern Surety Co.* v. *Burney et. al.,* (Okl. 1912) 126 Pac. 748.

The holding in the principal case seems to be against the numerical weight of authority. Massachusetts, Maine, New York, Pennsylvania, Missouri, Indiana, and Nevada hold that the special bondsmen *only* are liable to account for the proceeds of a sale of the ward's real estate where such a special sales bond is required and furnished. *Mattoon* v. *Cowing,* 13 Gray, 387: *Judge of Probate* v. *Toothaker,*83 Me. 195, 22 Atl. 119: *Allen* v. *Faye,* 63 N. Y. Supp. 1031: *Blauser* v. *Diehl,* 90 Pa. 350: *Com.* v. *American Bonding Co.,* 212 Pa. St. 365, 61 Atl. 939: *State* v. *Peterman,* 66 Mo. App. 257: *Colburn* v. *State,* 47 Ind. 310: (but see dictum in *Yost* v. *State,* 80 Ind. 350); *Henderson* v. *Coover,* 4 Nev. 429. The rule in Iowa is also contrary to the principal case, but the difference may be accounted for by the difference in the statutes of the two states. See *Madison County* v. *Johnston,* 51 Iowa 152, 50 N. W. 492. Kentucky, Mississippi, and Texas seem to be in accord with the principal case. *Barker* v. *Boyd,* 24 Ky. L. Rep. 1389, 71 S. W. 528; *State* v. *Cox,* 62 Miss. 786; *Fidelity and Deposit Co.* v. *Schelper,* 37 Tex. Civ. App. 393, 83 S. W. 871. Florida makes the general bond primarily liable. *Hart* v. *Stribling,* 21 Fla. 136. West Virginia, on the other hand, makes the special bond primarily liable. *Findley* v. *Findley,* 42 W. Va. 372,26 S. E. 433: (but see *Kester* v. *Hill,* 42 W. Va. 611, 26 S. E. 376). Ohio holds the two bonds jointly liable. *Swisher* v. *McWhinney,* 64 Ohio St. 343, 60 N. E. 565. It is submitted however that the decision in the principal case is best calculated to protect the interest of the ward.

INSURANCE—RATIFICATION BY INSURED, AFTER LOSS, OF POLICIES PROCURED BY AGENT WITHOUT AUTHORITY.—The president of a corporation, without authority from the corporation, secured from the defendant a fire policy in the name of the corporation covering certain of its goods. After a loss and with knowledge thereof, the corporation ratified the act of its president. In a suit against the insurer to enforce the policy, *Held,* (LACOMBE, J., dissenting) that the ratification bound the insurance company and recovery could be had. *Marqusee* v. *Hartford Ins. Co.* (C. C. A., 1912), 198 Fed. 475.